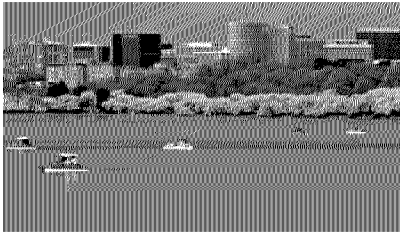


Water Law News for January 17, 2012
Mary Grady to: Steven Neugeboren
Bcc: Mindy Kairis

01/17/2012 10:12 AM

From: Mary Grady/DC/USEPA/US
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WATER LAW NEWS JANUARY 17, 2012

BNA, Inc.

Daily Environment

REPORT

HIGHLIGHTS

Climate Change

Analysis Tool Allows States to Gauge Effectiveness of Emission-Reduction Policies

A new tool to help transportation agencies assess policy alternatives for reducing greenhouse gas emissions was released by the Federal Highway Administration Jan. 9....

Climate Change

More Climate Research Needed to Inform National Ocean Policy, White House Says

Better coordination of climate change research and observation is needed to provide the "core information base needed for vulnerability assessments and adaptation efforts," the White House said in its Draft National Ocean Policy...

Drilling

Appeals Board Approves Shell's Air Permits For Drill Ship, Associated Vessels in Chukchi

ANCHORAGE, Alaska—The Environmental Protection Agency's appeals panel Jan. 12 upheld air quality permits for a drill ship and associated vessels that Shell plans to use this year to drill exploration wells in the Chukchi Sea off...

Invasive Species

USGS Study Finds Lake Erie Conditions 'Highly Suitable' for Spawning Asian Carp

A U.S. Geological Survey study found that the temperature and water velocity of Lake Erie and its major tributaries are "highly suitable" for spawning invasive species of Asian carp....

Radioactive Waste

Company Boosts Contribution to \$6.9 Million To Speed Cleanup of Colorado Uranium Mill

DENVER—Cotter Corp. reached an agreement with the state of Colorado that will accelerate the cleanup of a uranium mill in Canon City, Colo., the state Department of Public Health and Environment announced Jan. 13....

Regulatory Policy

Obama Proposes Moving NOAA to Interior As Part of Reorganization of Administration

The National Oceanic and Atmospheric Administration would be moved to the Interior Department from the Commerce Department under a proposed reorganization unveiled by President Obama Jan. 13....

Water Pollution

USDA Announces \$10 Million in Grants For Water Quality Trading Among Farmers

Agriculture Secretary Tom Vilsack announced Jan. 13 that the agency is offering \$10 million in grants to promote water quality trading among farmers and ranchers....

CORRECTION

A Jan. 12 report in 2012 Outlook summarizing environmental cases pending in federal courts incorrectly included National Ass'n of Home Builders v. U.S. Army Corps of Engineers, D.C. Cir., No. 10-5169. The case, filed in the U.S. Court...



Inside EPA's **Water Policy Report**, 1/16/12

<http://insideepa.com/Water-Policy-Report/Water-Policy-Report-01/16/2012/menu-id-127.html>

Inside EPA's **Risk Policy Report**, 1/17/12

<http://insideepa.com/Risk-Policy-Report/Risk-Policy-Report-01/17/2012/menu-id-130.html>

EPA's New Detection Method Seen Driving Cr6 Monitoring Requirement

EPA has issued a revised method for measuring levels of hexavalent chromium (Cr6) in drinking water, which appears to resolve concerns raised by drinking water utilities while fueling speculation that the agency's upcoming Unregulated Contaminant Monitoring Rule (UCMR3) will require utilities to monitor for the ubiquitous contaminant.

Listing Of Gulf Waters Undermines EPA 'Credibility' With Key Farm Groups

The Iowa Department of Agriculture and several state farm groups are calling on EPA to drop its ongoing efforts to list three segments of the Gulf of Mexico in Louisiana as impaired for low oxygen levels, saying the move further undermines the agency's credibility with the agriculture sector, as well as its vow to have states address the issue.

Latest Blogs

Court Bars IG Report From Climate Suits

A federal appeals court has rejected industry's request to consider in suits over EPA's greenhouse gas (GHG) rules an Inspector General (IG) report that found . . .

Judge Critical Of Everglades Plan

A federal judge has called on EPA and the state of Florida to redouble their funding and planning efforts to get the Florida Everglades to . . .

Peer Review For Fracking Study

EPA is seeking nominations for a panel to peer review its high-profile draft report concluding that hydraulic fracturing operations in Wyoming likely contributed to contamination . . .



CONGRESS 2012:

Committees prep their agendas -- but will anything really get done?

Congress is returning to Washington, and the partisan rancor that defined Capitol Hill in 2011 is likely to remain -- or get even worse -- in 2012. Republicans still run the House. Democrats continue to cling to a slim majority in the Senate. President Obama seems determined to keep his distance from both chambers. And it's an election year -- what are the odds of anything getting done this year? [Go to story #1](#)

OIL AND GAS:

Parties prep for next round of skirmishing over Keystone XL pipeline

Elana Schor, E&E reporter

Published: Tuesday, January 17, 2012

As the House of Representatives returns today, the Keystone XL oil pipeline is rising to the top of the GOP energy agenda -- with Republicans united in their aim to press the Obama administration for a green light on the project in any way they can.

The \$7 billion Canada-to-U.S. pipeline's power to help the GOP nudge Democrats toward the defensive over jobs and fuel prices stands to color talks on extending the payroll tax cut now set to expire Feb. 29 as well as the progress of nearly every high-priority bill that moves forward during this presidential election year. Perhaps the biggest question surrounding Keystone XL, then, is how definitively the White House seals its fate within the next five weeks.

Republicans such as Sen. John Hoeven of North Dakota already are readying legislation that would empower Congress to override an administration denial of the pipeline's permit bid and allow construction to start on the 1,700-mile link between Alberta's oil sands and Gulf Coast refineries (*Greenwire* , Jan. 12).

Democrats are preparing in turn, looking for a White House rejection of the XL line -- which their leaders oppose as a high-emissions setback to renewable energy development -- that decouples the project as much as possible from the payroll tax cut, a still-pending tax extenders package and other dearly sought priorities.

"How the president says no is maybe the key part here in determining what avenues would be open to Republicans or TransCanada or anybody else," one Senate Democratic aide said in an interview, referring to the Alberta-based corporation behind Keystone XL.

The Democratic aide, speaking on condition of anonymity to address the situation candidly, added that the president would be best-served by running out the clock on the pipeline, waiting until the GOP-backed deadline of Feb. 21 before ruling.

"[K]nowing the Republicans are trying to attach Keystone XL legislation to any must-pass bills, including future negotiations over tax extenders," the aide said, "it may be better to use all the time available ... in order to thwart additional legislative efforts that would seek to force approval of the pipeline."

Like Rep. Lee Terry (R-Neb.), author of a lower chamber bill that would mandate a Keystone XL signoff rather than leave President Obama in charge of the project, Hoeven crafted his legislation without a time limit for environmental review of a potential new route for the pipeline through Nebraska. The Cornhusker State drove the administration's stated rationale for delaying a final decision on the pipeline on Nov. 10, citing the need for a fresh assessment of a pipeline path that would steer clear of Nebraska's sensitive Sandhills.

Hoeven used Saturday's weekly GOP radio address to amplify a new note of his party's Keystone XL messaging. In addition to more than a half-million daily barrels of Canadian oil-sands crude -- bitterly opposed by greens who lambaste it as a "carbon bomb" -- the North Dakotan noted that the XL line also would ship 100,000 barrels of domestic fuel from his state's thriving Bakken region.

"It's hard to imagine a project that is more in the national interest and the interest of the American people," Hoeven added.

Environmentalists who are charging into battle with Republicans and industry over the pipeline warn Hoeven's party that any attempt to force congressional approval of Keystone XL from the White House's purview could run into a buzzsaw.

"Congress ought to be extremely wary of turning itself into a permitting agency, and the White House, like all White Houses, will be extremely alert to anything they view as trampling on executive branch prerogatives," said Natural Resources Defense Council government affairs director David Goldston in an interview.

Payroll tax marriage?

Despite Republicans' appetite for forcing further debate over Keystone XL, which drew support from dozens of conservative House Democrats last year and counts several Senate Democratic supporters, the pipeline may not be able to return as a partner for a second payroll tax-cut bill that comes down the pike next month.

If the pipeline is divorced from the payroll tax relief, Democrats could claim a victory in the apparent backfiring of the GOP's push for the Feb. 21 deadline. As their party's Senate aide pointed out, Republicans "want the president to have to make a substantive decision on the project" rather than blaming the time crunch of their proposed 60-day window as the reason for denying the pipeline a permit.

The White House already has signaled that it would point to the Republican clock as a reason for disposing of TransCanada's application, noting that the company has yet to settle on an alternative path in Nebraska.

TransCanada spokesman Shawn Howard said the Nebraska review would not impede a potential start to pipeline construction in other states, noting that the in-state process is still awaiting the approval of a memorandum of understanding with the State Department.

A Senate GOP aide, speaking candidly on condition of anonymity, declined to rule out the next payroll tax-cut bill as a vehicle for further pipeline legislation. But, the aide added, a second linked attempt to fast-track Keystone XL "would be different and probably not so easily accepted," despite the fact that "a number of Democrats, of Senate Democrats, support the bill."

More FOIA drama

The State Department, which remains in the lead on the Keystone XL review in the run-up to Feb. 21, has so far declined to comment on the deadline other than to say it is reviewing the language passed as part of the payroll tax-cut deal on Dec. 23.

Greens continue to exert political pressure on the agency, however, over a pipeline review process they condemn as overly influenced by TransCanada. Friends of the Earth on Friday released a new batch of State Department documents obtained under the Freedom of Information Act, blasting the agency for redacting data from several meetings on the pipeline.

Coupled with other missing information in previous releases, Friends of the Earth spokesman Nick Berning wrote in a blog post, the new redactions suggest "that something went awry in State Department's review of the pipeline's likely impacts -- and that the department continues to try to hide information about what happened."

State has long defended its three-year Keystone XL review as unbiased and conducted in accordance with the law. The agency's inspector general is currently auditing that internal handling of the pipeline with Reuters reporting Friday that a final verdict on State's performance could come before Feb. 21.

Labor and business

In addition to the internal Democratic splits over the pipeline and its near-doubling of Canadian oil-sands crude import capacity, Republicans frequently point to the support of several major labor unions as proof of Keystone XL's job-creation value.

But the leaders of one top pro-pipeline workers' group, the Laborers International Union of North America, opposed the GOP bid to tie Keystone XL to the payroll tax cut and have stopped short of threatening to desert the president if he denies the project. Business Roundtable President John Engler, the former Republican governor of Michigan, acknowledged last week that labor leaders supportive of the pipeline would still be there for Obama in November.

"This is more of a rank-and-file question," Engler told reporters, mentioning a "guy in the building trades who is not working."

But with the American Petroleum Institute already airing TV spots aimed at pressuring Democrats on Keystone XL, a lack of overt bad blood with labor is unlikely to spare Obama the wrath of business groups if he nixes the pipeline.

Asked whether his group and others would turn to other pipeline alternatives if Keystone XL does not advance, Engler said: "If the president were to say 'I'm deferring a decision at this time, or not acting,' that doesn't make it go away."

Reporter Christa Marshall contributed.

RENEWABLE ENERGY:

Ore. project pumps water into volcano to produce power

Published: Monday, January 16, 2012

Energy experts will pump 24 million gallons of water into a dormant volcano in Oregon this summer in an effort to heat water and

generate cheap electricity.

Geothermal energy has not yet lived up to its promise, due to technical challenges and low natural gas prices that make more expensive renewable energy options less attractive.

Still, the \$43 million project has important backers, including the federal government, Google Inc. and others.

The project, spearheaded by AltaRock Energy Inc. and Davenport Newberry Holdings LLC, is based on a new technology called Enhanced Geothermal Systems. The companies will drill wells into the rock and will pump water in to create tiny fractures in a process called hydroshearing. Then they will pump in cold water, which will get heated up and released as steam.

Some worry that hydroshearing could trigger earthquakes, but the more immediate challenge for the project is creating an underground reservoir large enough for a commercial project (Jeff Barnard, [*AP/Seattle Post-Intelligencer*](#) , Jan. 14). -- **GV**

OIL AND GAS:

Texas fracking law will provide key water-usage data

Published: Monday, January 16, 2012

A new law in Texas will not only give researchers information about what chemicals drilling companies are using in hydraulic fracturing but also provide vital data about how much water is used in the process.

Under the state's fracking disclosure law, which will go into effect on Feb. 1, drilling operators will have to report their chemical and water usage to state regulators. The information will then be posted on a public website. Researchers say the information will be invaluable in assessing Texas' water supplies, especially in drought-prone and rural areas.

Most hydraulic fracturing wells use between 1 million and 5 million gallons of water every three to five days, according to Justin Furnace, president of the Texas Independent Producers & Royalty Owners Association. A Texas Water Development Board study from last summer found that less than 1 percent of the state's water is used for fracturing.

The data used in the study are old, though, and don't take into account recent drilling booms in rural areas, like the region overlying the Eagle Ford Shale. In some of those rural areas, water usage could make up to 40 percent of water demand by 2020, said Dan Hardin, the water board's resource planning director.

Researchers say Texas so far has done a poor job of keeping track of water usage.

"Texas ranks pretty much dead last of any state I've worked with for keeping track of that sort of data," said Mark Engle, a geologist with the U.S. Geological Survey's Eastern Energy Resources Science Center (Kate Galbraith, [*New York Times*](#) , Jan. 14). -- **AP**

WATER POLLUTION:

Lisa Jackson criticizes Pa. officials over Dimock issue

Published: Monday, January 16, 2012

EPA Administrator Lisa Jackson criticized Pennsylvania officials at a news conference Friday for failing to protect people whose wells were allegedly contaminated by natural gas drilling.

She said there were not sufficient data to decide whether to ship water to residents of Dimock, Pa., who have filed a lawsuit against Cabot Oil & Gas Corp., alleging contamination from drilling activities.

Jackson also said it was "puzzling" that the environmental protection secretary wrote her a letter last week criticizing the EPA for its "rudimentary" understanding of the contamination issue.

The residents of Dimock had earlier demonstrated outside the Philadelphia's Academy of Natural Sciences, where Jackson was on a panel.

Cabot says it did not contaminate the wells with methane and that the pollution had been present before drilling started.

The federal government has wavered on the issue of Dimock. Last week, it first said the water did not pose health risks but later said more study was warranted. It promised delivery of water and then reneged on its offer less than 24 hours later (Geoff Mulvihill, [*AP/San Francisco Chronicle*](#) , Jan. 13). -- **GV**

COAL ASH:

Toxic waste dumping increasing -- enviro report

Manuel Quinones, E&E reporter

Published: Monday, January 16, 2012

The amount of potentially toxic materials dumped into coal ash ponds has increased in recent years, the Environmental Integrity Project says in a recent analysis of U.S. EPA data.

The EIP, a group pushing for stronger federal oversight of power plant combustion waste, says the amount of toxics dumped into wet ponds was higher in 2010 than it has been since 2007. Researchers crunched industry-reported numbers available through EPA's 2010 Toxics Release Inventory made available earlier this month.

Ash producers dumped roughly 112.8 million pounds of toxic materials such as arsenic into ponds in 2010, a 9 percent increase compared with 2009, the group says.

"Not only are coal ash impoundment levels rising, rather than dropping," EIP director Eric Schaeffer said in a statement, "but we are seeing efforts by some in Congress to thwart EPA efforts to protect the health of Americans from toxic coal ash dump sites."

Environmental advocates like Schaeffer want EPA to move forward with a proposals to end wet dumps and potentially label coal ash a hazardous substance. They say legislation passed in the House ([H.R. 2273](#)) and under consideration in the Senate would leave ash ponds in place.

A 2008 spill at a Tennessee Valley Authority coal ash impoundment in east Tennessee has prompted the executive and congressional efforts at tougher rules.

"EPA proposed in June of 2010 to require the closure of surface impoundments within five years," Schaeffer said. "If the Agency manages to issue a final rule before the end of 2012, that ban would take effect at the end of 2017, a full nine years after the TVA spill."

Congressional Republicans, joined by some Democrats, defend their legislation. They say they would rather give states primary oversight for coal ash disposal and that preventing a hazardous designation for coal ash would protect recycling the material for use in construction and agriculture.

"North Dakota is a good example of how states can manage the disposal of coal residuals with good environmental stewardship, and at the same time, allow for beneficial uses like building roads, bridges and buildings that are stronger and less expensive," bill sponsor Sen. John Hoeven (R-N.D.) said in a statement.

The EIP analysis says 20 facilities are responsible for more than half of the toxic pond dumps. Four of them are in Alabama. North Dakota is eighth among states with the most discharges of toxic metals to surface impoundments, with Alabama and Georgia topping the list, EIP says.

Environmentalists complain that many of the surface waste ponds are unlined, increasing the risk for toxic seeps. Last week the Southern Environmental Law Center filed a lawsuit to prevent pollution from a South Carolina dump ([E&ENews PM](#) , Jan 12).

EPA's 2010 Toxics Release Inventory listed electric utilities as the second top source of toxic releases, after the metals mining industry ([Greenwire](#) , Jan. 6). However, EPA noted that the electric sector's releases went down by 34 percent from 2001 to 2010.

[Click here](#) to access the EIP analysis.

GREAT LAKES: Lake Erie prime for Asian carp -- study

Published: Monday, January 16, 2012

Lake Erie has the ideal conditions needed for Asian carp to thrive, according to a study by the U.S. Geological Survey.

The study, which looked at characteristics like water temperature, describes the Great Lake and some of its tributaries, including the Maumee River, as highly or moderately suitable for the invasive fish to lay eggs.

"The potential certainly exists for Asian carp to spawn in tributaries of Lake Erie," said Patrick Kocovsky, a fisheries biologist based in Sandusky, Ohio. "We are getting a clearer picture of the threat Asian carp pose to western Lake Erie, and that picture suggests there is cause for concern."

The study adds to growing concern that the bighead and silver carp could establish themselves in the Great Lakes and threaten the \$7 billion fishing industry there (John Fleshooters, [AP/Columbus Dispatch](#) , Jan. 16). -- AP

ClimateWire -- Tue., January 17, 2012 -- [Read the full edition](#)

1. REGULATION: DOE tries a 'fundamentally different' approach to modernize the nation's power grid

The Energy Department is preparing to change how it assesses congestion on the high-voltage power line network as it seeks to revitalize the stalled transmission policy process created in the 2005 Energy Policy Act, DOE senior adviser Lauren Azar says. This year, DOE will complete its third triennial analysis of congestion in the Eastern and Western interstate power grids under the 2005 law, identifying any areas where power flows are constrained by lines or equipment.

2. WEATHER: Where did winter go? Birds, bees and some Londoners are confused

LONDON -- Bees are buzzing, flowers are blooming and trees are budding across southern England after a topsy-turvy 12 months, yet it is still mid-winter. While people scratch their heads over stark changes, woodpeckers are plunging into an abnormally early mating season. The coldest December on record in 2010 was followed by the warmest and driest spring, bringing with it widespread drought that remains in force across many areas of southern and eastern England after the second warmest and driest autumn since 1910.

TODAY'S STORIES

- 3. PLANNING: Texas study of Galveston Bay avoids mention of climate change, or human causes
- 4. FINANCE: World Bank studies coal-fired power plant for Kosovo
- 5. RENEWABLE ENERGY: Scientists seek help from bacteria colonies to produce 'drop in' fuels
- 6. FORESTS: Current climate models neglect the role of trees -- book
- 7. OCEANS: Study finds fish 'inebriated' by CO2
- 8. MODELING: Warmer summers could lead to colder winters in North America
- 9. BUSINESS: Tourism, a major CO2 emitter, is hit hard by climate change

E&ETV's OnPoint

- 10. OIL AND GAS: NWF's Symons calls Keystone XL a scam, says oil will not be used to benefit Americans

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